

ORDINANCE 01-05

AN ORDINANCE REPEALING CHAPTERS 27 AND 28 OF THE TOWN OF FORT MYERS BEACH TRANSITIONAL LAND DEVELOPMENT REGULATIONS; PROVIDING AUTHORITY; REPEALING CHAPTER 27 AND 28 OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS; ADOPTING A NEW CHAPTER 27 OF THE LAND DEVELOPMENT CODE PROVIDING DIVISION 1 DEFINITIONS AND ENFORCEMENT: SEC. 27-45 DEFINITIONS; SEC. 27-46 AREA OF ENFORCEMENT; SEC. 27-47 MEANS OF ENFORCEMENT; DIVISION 2 PERSONAL WATERCRAFT: SEC. 27-48 REGULATIONS FOR OPERATION OF PERSONAL WATERCRAFT; SEC. 27-49 REGULATIONS AND LOCATIONS FOR PERSONAL WATERCRAFT RENTALS; DIVISION 3 PARASAILING: SEC. 27-50 REGULATIONS AND LOCATIONS FOR PARASAIL ACTIVITIES; DIVISION 4 ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING: SEC. 27-51 ADDITIONAL RULES APPLYING TO BOTH PWVL AND PAL BUSINESSES; SEC. 27-52 PWVL AND PAL APPLICATIONS; REGULATORY FEES; SEC. 27-53 PWVL AND PAL RENEWALS; SEC. 27-54 DISPLAY OF PWVL AND PAL LICENSES; SEC. 27-55 TRANSFERABILITY OF PWVL AND PAL LICENSES; GRANDFATHER CLAUSE; SEC. 27-56 INSURANCE; SEC. 27-57 PENALTY; SEC. 27-58 STANDARDIZED RULES; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. Repeal Of Chapter 27 AND 28 of the Transitional Land Development Regulations. By the authority of Section 15.08 (c) of the Town Charter, Chapters 27 and 28 of the transitional land development regulations are repealed. Transitional Chapter 27 contains the following sections: 27-44 Title and Citation; 27-45 Definitions; 27-46 Area of Enforcement; 27-47 Means of Enforcement; 27-48 Regulations for Operation of Personal Watercraft; 27-49 Regulations and Locations for Personal Watercraft Rentals; 27-50 Unlicensed Rental of Personal Watercraft Prohibited; 27-51 PWVL Application; Regulatory Fee; 27-52 PWVL Renewal; 27-53 Display of PWVL; 27-54 Conditions of PWVL Use; 27-55 Transferability of PWVL; Grandfather Clause; 27-56 Insurance; 27-57 Penalty; 27-58 Sunset Provisions. Chapter 28 contains the following sections: 28-44 Title and Citation; 28-45 Definitions; 28-46 Area of Enforcement; 28-47 Means of enforcement; 28-48 Regulations and Locations for Parasail Activities; 28-49 Unlicensed Parasailing Prohibited; 28-50 PAL Application; Regulatory Fee; 28-51 PAL Renewal; 28-52 Display of PAL; 28-53 Conditions of PAL Use; 28-54 Transferability of PAL: Grandfather Clause; 28-55 Insurance; 28-56 Penalty.

SECTION 3. Adoption of New Chapter 27 of the Land Development Code. The new Chapter 27 of the Town of Fort Myers Beach land development code, entitled "PERSONAL WATERCRAFT AND PARASAILING" shall be as contained in the attached Exhibit A. The new Chapter

27 contains the following sections: DIVISION 1 DEFINITIONS AND ENFORCEMENT: Sec. 27-45 Definitions; Sec. 27-46 Area of Enforcement; Sec. 27-47 Means of Enforcement; DIVISION 2. PERSONAL WATERCRAFT: Sec. 27-48 Regulations for Operation of Personal Watercraft; Sec. 27-49 Regulations and Locations for Personal Watercraft Rentals; DIVISION 3 PARASAILING: Sec. 27-50 Regulations and Locations for Parasail Activities; DIVISION 4 ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING: Sec. 27-51 Additional Rules Applying to Both PWVL And PAL Businesses; Sec. 27-52 PWVL And PAL Applications; Regulatory Fees; Sec. 27-53 PWVL and PAL Renewals; Sec. 27-54 Display of PWVL and PAL Licenses; Sec. 27-55 Transferability of PWVL and PAL Licenses; Grandfather Clause; Sec. 27-56 Insurance; Sec. 27-57 Penalty; Sec. 27-58 Standardized Rules. New language is indicated with underlining and repealed language is indicated with ~~strike-throughs~~.

SECTION 4. Severability. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

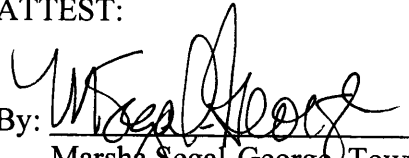
SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Murphy and seconded by Council Member Ryneanson and, upon being put to a vote, the result was as follows:

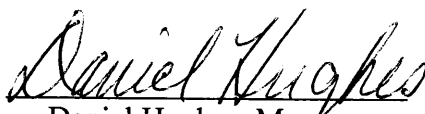
Daniel Hughes	AYE
Garr Reynolds	AYE
Ray Murphy	AYE
Terry Cain	AYE
Howard Ryneanson	AYE

DULY PASSED AND ENACTED this 24th day of September, 2001.

ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Daniel Hughes, Mayor

Approved as to form by:

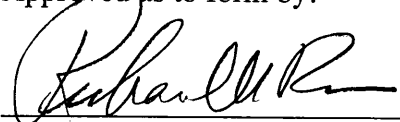

Richard V.S. Roosa, Town Attorney

EXHIBIT A

CHAPTER 27 PERSONAL WATERCRAFT¹ AND PARASAILING²

Division 1. Definitions and Enforcement

~~Secs. 27-1--27-44 43. Reserved.~~

~~Sec. 27-44. Title and citation.~~

~~Sec. 27-45. Definitions.~~

~~Sec. 27-46. Area of enforcement.~~

~~Sec. 27-47. Means of enforcement.~~

Division 2. Personal Watercraft

~~Sec. 27-48. Regulations for operation of personal watercraft.~~

~~Sec. 27-49. Regulations and locations for personal watercraft rentals. Unlicensed parasailing prohibited.~~

Division 3. Parasailing

~~Sec. 27-50. Regulations and locations for parasail activities. Unlicensed rental of personal watercraft prohibited.~~

Division 4. Additional Rules and Procedures Applying to Both Personal Watercraft and Parasailing

~~Sec. 27-51. 54. Additional rules applying to both Conditions of PWVL and PAL businesses use.~~

~~Sec. 27-52. 51. PWVL and PAL applications; regulatory fees.~~

~~Sec. 27-53. 52. PWVL and PAL renewals.~~

~~Sec. 27-54. 53. Display of PWVL and PAL licenses.~~

~~Sec. 27-55. Transferability of PWVL and PAL licenses; grandfather clause.~~

~~Sec. 27-56. Insurance.~~

~~Sec. 27-57. Penalty.~~

~~Sec. 27-58. Standardized rules.~~

DIVISION 1. DEFINITIONS AND ENFORCEMENT

~~Secs. 27-1--27-44 43. Reserved.~~

~~Sec. 27-44. Title and citation.~~

~~This ordinance shall be known and cited as the Town of Fort Myers Beach Personal Watercraft Ordinance.~~

~~Sec. 28-44. Title and citation.~~

~~This ordinance shall be known and cited as the Town of Fort Myers Beach Parasailing Ordinance.~~

Sec. 27-45. Definitions. *[incorporates § 28-45]*

For the purposes of this chapter Ordinance, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

~~*Bather* means any person who is in the same water as a vessel, whether said person is swimming, wading, or engaged in any other activity in the water.~~

~~*Beach* means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.~~

~~*Business* shall mean any personal watercraft rental or parasailing activity business, including any commercial activity engaged in the rental, leasing, or bailment for consideration of personal watercraft or parasailing.~~

~~*Eco-tour* shall mean an educational tour led by a guide knowledgeable in environmental and ecological preservation, where the guide can communicate with the tour members and offer commentary about the ecological, environmental, and archaeological significance of Estero Bay.~~

~~*FWCC* means the Florida Fish & Wildlife Conservation Commission or its successor.~~

¹ Originally adopted as Chapter 27 by the Fort Myers Beach Personal Watercraft Ordinance, Ordinance 96-27.

² Originally adopted as Chapter 28 by the Fort Myers Beach Parasailing Ordinance, Ordinance 97-02, and later amended by Ordinance 99-04.

~~*Floating vendor* means a vessel represented as a place of business for a professional or other commercial enterprise which is used to solicit, conduct, or canvass for the sale or rental of any merchandise, services, goods, or property of any kind or character. This term does not include the following types of vessels:~~

- ~~(1) A vessel which in and of itself is rented;~~
- ~~(2) Any parasail operation using self-contained operational equipment so that launching or landing does not occur on land;~~
- ~~(3) A vessel maintained in a permanent location over privately owned or leased submerged bottom lands; or,~~
- ~~(4) A vessel used for hire (i.e., charter boat, dive boat, dinner cruise boat, tour boat, water taxi, etc.);~~

~~*Idle speed* means the lowest speed at which a vessel can operate and maintain steering control. The actual speed will depend upon the design of the vessel and on the vessel's load, wind direction, and speed, and the sea conditions. Generally, it will be between 1 and 3 miles per hour for outboard and inboard/outboard vessels, between 2 and 5 miles per hour for fixed shaft/rudder vessels, and the minimum speed necessary to effectively traverse breaking water for personal watercraft. For a non-motor propelled vessel, idle speed means that speed necessary for steerage way.~~

Littoral waters mean that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark. For purposes of this chapter Ordinance, the littoral right to use such waters shall be limited to the waters within the boundaries of the land-based site as those boundaries extend into the water at right angles from the shoreline.

Operate means to navigate or otherwise use any vessel in, on, or under the water.

PAL shall mean Parasailing Activity License.

Parasailing or parasailing activity shall mean the act of towing a person or object over the water, suspended beneath a parachute, kite, or other similar contrivance.

Person means any individual, partnership, firm, corporation, association, or other entity.

Personal watercraft means a ~~small class A1 or A2~~ vessel less than 16 feet in length as defined by state law which uses an outboard motor, or an inboard motor powering a water jet pump; as its primary source of motive power and which is designated to be operated by a person sitting, standing, or kneeling on, ~~or being towed behind~~ the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

PWVL shall mean Personal Watercraft Vendor's License; ~~and shall also include parasailing activity.~~

Town manager shall include the designee(s) of the town manager of the Town of Fort Myers Beach.

Site means the plot or parcel of land or combination of contiguous lots or parcels of land.

Slow speed means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

- (1) is operating on a plane is not proceeding at slow speed;
- (2) that is in the process of coming off plane and settling into the water, which action creates more than no or minimum wake, is not proceeding at slow speed;
- (3) that produces no wake or minimum wake is proceeding at slow speed;
- (4) that is completely off plane and which has settled into the water and is proceeding without wake or with minimum wake is proceeding at slow speed.

"Slow speed" means any through-the-water speed slow enough that the boat is neither planing nor moving with an elevated bow. A vessel that is operating at slow speed shall not be emitting a wake.

~~*Slow speed zone* means a designated area within which all vessel operators shall proceed at slow speed not on a plane and producing no or minimum wake.~~

Steerage way means the minimum rate of motion required for the helm of the vessel to have effect.

Vessel means a motor propelled or artificially

propelled vehicle and every other description of boat, watercraft, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include rafts, floats, or floatation devices, whether of canvas, vinyl, rubber, Styrofoam, or other substance, intended or capable of assisting in the floatation of a person on or in the water.

~~Water-oriented structure shall mean and include without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, boat ramp, or any other obstacle, obstruction, or protrusion used primarily for the landing or launching of watercraft, erosion control, and shoreline stabilization, or for water-oriented activities.~~

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 27-46. Area of enforcement. *[incorporates § 28-46]*

The area of enforcement of the provisions of this chapter Ordinance shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the Town of Fort Myers Beach, including all public waters within the jurisdiction of the town in which the tide ebbs and flows. This chapter Ordinance does not apply to the county-maintained or county-marked channels.

Sec. 27-47. Means of enforcement. *[incorporates § 28-47]*

The provisions of this chapter Ordinance shall be enforced by members of all duly authorized law enforcement agencies within the town and through enforcement mechanisms established by this code. ~~by the Town Division of Codes and Building Services. In addition to the regulations of this Ordinance, any operator of any type of personal watercraft is subject to and Florida Statutes Chapter 327.~~ *[final sentence relocated to § 27-51(b)]*

DIVISION 2. PERSONAL WATERCRAFT

Sec. 27-48. Regulations for operation of personal watercraft.

(a) In addition to other regulations in this code ~~set forth above~~, all personal watercraft shall also be operated in the following manner:

- (1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device, other than an inflatable device, approved by the United States Coast Guard.
- (2) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach such lanyard to his person, clothing, or personal flotation device as is appropriate for the specific vessel.
- (3) A person shall not operate a personal watercraft at any time between one-half hour before sunset and one-half hour after sunrise. However, agents or employees of law enforcement agencies or fire/emergency rescue services are exempt from this subsection while performing their official duties.
- (4) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute careless boating in violation of this chapter Ordinance.

Sec. 27-49. Regulations and locations for personal watercraft rentals.

(a) Any business person engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any

waters of the Town of Fort Myers Beach; must meet the following requirements:

- (1) A business person is required to obtain a Lee County occupational license which shall be issued to the personal watercraft operations office.
 - a. The operations office shall be located at a land-based site; and,
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and,
 - c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license is issued; and,
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the occupational license is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit.
- (2) A business person must have and maintain a telephone and an operable marine radio at its land-based operations office.
- ~~(3) A person must have a manned, motorized chase vessel with operational marine radio in good running condition that meets all United States Coast Guard safety requirements and is within vision of where the personal watercraft are being operated during all hours of the person's operation. [duplicate]~~
- ~~(4) A person shall register each personal watercraft and have a Florida vessel registration number affixed thereon. [duplicate]~~
- (3) ~~(5)~~ A business person may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 +6 years of age: (see also F.S. § 327.54). No person under the age of 14 may operate any personal watercraft.
- ~~(4)~~ During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. any state permits that may be required for this activity have been issued;
 - b. such movement begins only after 9:00 AM, or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and
 - c. the movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c)).
- ~~(5)~~ Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water. [relocated from § 27-54(a)(3)]
[the remainder of this section moved here from § 27-54(d) and (f) through (p)]
- ~~(6)~~ ~~(d)~~ Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.
- ~~(7)~~ ~~(f)~~ Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
- ~~(8)~~ ~~(g)~~ Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than 9" by 5" in size and of a contrasting color to the personal flotation device.
- ~~(9)~~ ~~(h)~~ Personal watercraft may be moored in the water during the operating hours of the business, but under no circumstances may a person place or arrange any personal watercraft vessel or associated equipment in any manner which blocks pedestrian traffic on the beach. Between the hours of 9:00 PM

and 7:00 AM from May 1 until October 31, all personal watercraft and associated equipment must be removed from the beach and placed behind the dune line.

a. If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.

b. If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.

Where compliance with the foregoing provision would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.

(10) ~~(i)~~ In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.

(11) ~~(j)~~ Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.

(12) ~~(k)~~ Fueling of personal watercraft on the beach or in the water shall require a spillproof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.

(13) ~~(m)~~ Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than a half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:

a. ~~(1)~~ To travel at slow speed until past said markers;

b. ~~(2)~~ To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft; and

c. ~~(3)~~ To travel at slow speed when returning to the shore; and

d. ~~(4)~~ To not travel within environmentally sensitive areas (within the 1000-foot territorial limits of the town) except with an eco-tour operator or guide associated with a business with a valid PWVL permit.

(14) ~~(n)~~ Each operator shall provide a buoy lane consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet. ~~However, in a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.~~

(15) ~~(o)~~ Each PWVL (jet ski) operator is limited to 8 rentals per location plus one chase vehicle. When 6 or more rentals are in use, the chase vehicle must be manned and in the water. Any operator may request a variance to allow by application and review pursuant to the special permit process provided by § 34-232(c) of the Fort Myers Beach land development code by complying with the standards of § 34-145(c), request allowance for additional rentals per location by using the standards and procedures in ch. 34.

(16) ~~(p)~~ Safe handling instructions.

a. Each patron shall receive standardized rules provided by the operator ~~and approved by the town manager~~ translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58. ~~attached to this ordinance as Exhibit A.~~

b. If the FWCC adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.

(17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.

~~Sec. 27-50. Unlicensed rental of personal watercraft prohibited.~~

- (18) ~~(a)~~ No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in ~~the land development~~ this code and this chapter Ordinance.
- (19) ~~(b)~~ No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach; except from a business holding a valid PWVL and which fully conforms to the terms of this chapter Ordinance.
- (20) ~~(c)~~ No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

DIVISION 3. PARASAILING

Sec. ~~27-50~~ 28-48. Regulations and locations for parasail activities.

Any person engaged in parasail activities for consideration or remuneration by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (a) A person is required to obtain a Lee County occupational license which shall be issued to the parasailing activities operations office.
- (1) The operations office shall be located at a land-based site; and,
 - (2) The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access; and,
 - (3) All business transactions such as the exchange of consideration or remuneration or any other type of transaction between the PAL and customer shall occur on the land-based site for which the occupational license is issued: and,
 - (4) ~~(b)~~ A person must have and maintain a telephone and an operable marine radio at its land-based operations office.

~~Sec. 28-49. Unlicensed parasailing prohibited:~~

~~(b) (a)~~ No person shall offer a ride on a parasail within the Town of Fort Myers Beach except at a parasail activities site which fully complies with the regulations set forth in ~~the land development~~ this code and this chapter Ordinance.

~~(c) (b)~~ No person shall have a parasailing operation within the Town of Fort Myers Beach; except from a business holding a valid PAL and which fully conforms to the terms of this chapter Ordinance.

~~(d) (c)~~ No person shall use a vessel for parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

[the remainder of this subsection moved here from § 28-53(d), (g), (i), and (j)]

~~(e) (d)~~ Each parasailing vessel must be registered in the name of the business and have a Florida vessel registration number affixed thereon.

~~(e) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.~~

~~(f) (g)~~ Parasail operations must have a primary location at a site in conformance with this code Ordinance or at a business located in a zoning district which specifically permits Transportation Services - Group I - Water-Oriented Uses or which otherwise specifically permits parasail activity. Parasail operators may pick up and return customers at other sites provided that the parasail operator has obtained written permission on a form provided by the town from the landowner where a PWVL has been issued. Written permission shall be kept on file at the PAL's primary location. In no event shall a parasail operator or his agents or employees solicit at the beach where they are picking up and returning customers.

~~(g) (h)~~ Parasail operators will pick up and drop off customers at the beach location pursuant to (2) (g) above. This process will be accomplished through buoy lanes within the 500-foot zone consisting of 6 buoys, with a minimum width of 15

feet and a maximum of 75 feet. In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.

(h) ~~(i)~~ Operators must be at least 1,000 feet from shore when they inflate the chute or deflate the chute and while flying.

(i) ~~(j)~~ Operators must limit the length of the line to 1,200 feet and may not fly the chute over or within 500 feet of the pier or within 1,000 feet of the beach. Further, all parasail and all operations must cease at sunset.

(j) Operators must also comply with all applicable boating and parasailing provisions of state law such as those found in F.S. § 327.37.

DIVISION 4. ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING

Sec. 27-51 27-54. Additional rules applying to both Conditions of PWVL and PAL businesses use. *[incorporates § 28-53]*

(a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the land development the remainder of this code plus the provisions of and this chapter Ordinance to have such business and shall not:

- (1) be located within 500 feet of any other business offering personal watercraft for rent or lease or parasailing activities, except for businesses that are co-located in accordance with § 27-54(e); or
- (2) be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or east of inland of the Big Carlos Pass Bridge.
- (3) *[moved to § 27-49(5)]*
- (4) lease, hire, or rent a personal watercraft to any person who is under 16 years of age: *[duplicate]*

(b) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all

requirements for both licenses.

(c) Businesses holding a valid PWVL or PAL must meet the following requirements:

[this subsection incorporates identical language from 28-53(b), (c), and (f)]

(1) Other boating regulations. ~~(b)~~ All personal watercraft rental businesses and their vessels are required to comply with the town's Vessel Control and Watercraft Safety Ordinance (Ordinance 96-26 as amended) and with Florida Statutes Chapter 327.

~~(c) A business shall have and maintain a telephone and an operable marine radio at its land-based operations office. [duplicate]~~

(2) Insurance. ~~(c)~~ A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56. this Ordinance.

(3) Structures on the beach. During its regular business hours only, a business may place one free-standing structure on the beach at its land-based site to conduct business with the public.

a. This structure may be a table, podium, booth, or storage box.

b. The total horizontal dimension of this structure may not exceed a horizontal dimension of 4 feet by 6 feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.

c. This structure must be portable and never be left on the beach before or after regular business hours.

(4) Signs on the beach. This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed 8 square feet as measured in accordance with § 30-91.

a. Any rate charts or state-mandated informational signs smaller than 2 square each shall not be counted as part of the signage limitation above.

b. ~~(f)~~ No billboards or freestanding signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth, or storage box.

(5) Signs off the beach. A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise

permitted by ch. 30 of this code at that site. However, any such sign:

- a. must be placed indoors after business hours;
- b. must not be illuminated; and
- c. must not be placed on the beach at any time.

- (6) **Removing nonconforming structures from the beach.** Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of September 24, 2001, may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.

Sec. 27-52 5t. PWVL and PAL applications; regulatory fees. *[incorporates § 28-50]*

(a) Application for a PWVL or PAL license shall be made to the town manager on a form provided by the town.

(b) Information to be provided by the applicant shall include, at a minimum:

(1) **Business location:**

- a. The STRAP number and street address from which the personal watercraft or parasailing activity business will operate;
- b. If the applicant is not the owner of the property from which the business personal watercraft will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.

(2) **Ownership information:**

- a. Business owner's name, home address, local address, telephone number;
- b. Manager's name, home address, local address, telephone number;
- c. Mailing address at which notice of any town information pertinent to any personal watercraft rental or parasailing activity business ~~PWVL~~ shall be considered received and binding upon the applicant or PWVL or PAL holder, on the fifth day after first-class mail is posted to said address;
- d. State sales tax number.

(3) **Business equipment information:**

- a. The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer,

color, and Florida vessel registration number(s).

- b. For PWVL applications only, a description of the chase vessel(s) to be kept at the place of business as well as the Florida vessel registration number(s).

- (4) **Proof of insurance:** Proof of required insurance.

(5) **Fire report:**

- a. For PWVL applications: Prior to annual license renewal, the fire marshal will submit evidence of a fire safety inspection to the town.
- b. For PAL applications: Proof of compliance with fire regulations.

- (6) **CPR certification:** For PWVL applications only, proof of CPR certification of sufficient persons so that there will be one in attendance at all times of operation.

- (7) **Annual fee:** Pays an annual fee of:

- a. \$60 for town administrative processing costs; and
- b. \$30 for the right to offer for business, as herein provided, a the rental of the personal watercraft or the right to operate a parasailing activity business; and
- c. \$80 for town enforcement costs.

(c) **Misrepresentation.** Applicants who misrepresent information provided under this section shall not be issued a PWVL or PAL, or if issued, may suffer suspension or revocation of the PWVL or PAL.

(d) **Cap on number of licenses.** PWVLs and PALs shall be issued on an annual basis coinciding with the town's fiscal year, October 1 through September 30.

- (1) The town manager may issue no more than ~~10~~ 15 PWVL licenses outstanding at any point of time.

- ~~(1) Transferability of PWVL licenses to new conforming locations may only be allowed when licenses fall below 15 and 6 respectively. If there are 15 PWVL licenses, then a license at a nonconforming location can move that license to a conforming location and surrender the nonconforming location which still results in 15 total licenses. [moved to 27-55(a)(4)]~~

- ~~(2) PWVLs shall be issued on an annual basis coinciding with the town's fiscal year,~~

- ~~October 1 through September 30:~~
- (2) ~~(7)~~ The town manager may issue no more than 6 PAL licenses outstanding at any point of time. ~~PALs shall be issued on an annual basis coinciding with the town's fiscal year, October 1 through September 30:~~
 - (3) See § 27-55 for regulations on transfers of existing PWVLs and PALs.

Sec. 27-53 52. PWVL and PAL renewals.
[incorporates § 28-51]

- (a) Except as provided in this chapter, upon application the town manager may renew the PWVL or PAL of any applicant who:
- (1) Held a valid PWVL or PAL and operated the personal watercraft rental or parasailing activity business during for at least nine months out of the previous year; The following evidence of such operation shall be accepted if provided separately for the specific business location and the specific license (PWVL or PAL) for which the renewal is requested:
 - a. Copy of a valid Application to Collect and/or Report Tax in Florida (DR-1) for the previous year, and
 - b. Evidence that tax payments have been made at least quarterly during the previous year in accordance with that specific application; and
 - (2) Has provided the town with new or updated information, documents, and fees listed in this chapter Section Five and continues to meet the other regulations set forth in the land development this code; and
 - (3) Pays a late processing fee of \$25 for any renewal application filed after October 1.
- (b) Upon application, the town manager may renew any PWVL or PAL suspended under this chapter, Ordinance, hereof; but any remaining term of suspension shall be applied to the renewed license, and during said term the PWVL or PAL confers no rights to offer the rental of any personal watercraft or to operate any parasailing activity.

(c) Any PWVL or PAL not renewed by October 15th shall be void and of no further use or effect whatsoever. No business deemed to be a nonconforming use in accordance with the provisions of this chapter Ordinance or other the provisions of the Fort Myers Beach land

development this code, which fails to renew its license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.

Sec. 27-54 53. Display of PWVL and PAL licenses. *[incorporates § 28-52]*

Any business offering the rental of personal watercraft or parasailing activities shall display the PWVL or PAL in plain sight at the location from which the rental of personal watercraft is are offered or at the parasail activities operation's office.

Sec. 27-54. Conditions of PWVL use: *[relocated as § 27-51]*

Sec. 27-55. Transferability of PWVL and PAL licenses; grandfather clause.
[incorporates § 28-54]

- (a) **Transferability.** Provided that this chapter Ordinance has been complied with, the PWVL or PAL is transferable if:
- (1) The location of the business complies with the minimum separation requirements of this chapter Ordinance, or is a "grandfathered in" accordance under subsection (b) below; and
 - (2) The new business owner files an amended application with the town providing the information required in this chapter Ordinance; and
 - (3) Transferability of PALs to new conforming locations may only be allowed when licenses fall below 6. If there are 6 or fewer PALs issued, then a license at a nonconforming location can move that license to a conforming location and surrender the nonconforming location which still results in 6 or fewer total licenses. For PAL transfers only, the number of outstanding PALs issues by the town must be less than six. *[moved from § 28-54]*
 - (4) Transferability of PWVLs licenses to new conforming locations may only be allowed when licenses fall below 10 +5 and 6 respectively. If there are 10 or fewer +5 PWVLs issued licenses, then a license at a nonconforming location can move that license to a conforming location and surrender the nonconforming location which still results in 10 or fewer +5 total licenses.

[moved from § 27-51(d)(1)]

(b) **Nonconforming PWVLs.** Personal watercraft vendors ~~or~~ that have established or commenced business at their existing locations on or before December 2, 1996 the effective date of this Ordinance, but which may or may not comply with the location requirements set forth in this chapter Ordinance and the land-use remainder of this code; may continue to operate as a nonconforming use after December 2, 1996 the effective date of this Ordinance, unless terminated for failure to obtain the PWVL as required by this chapter Ordinance, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PWVL permit.

(c) **Nonconforming PALs.** (b) Parasail operators that have established or commenced business at their existing locations on or before January 21, 1997 the effective date of this Ordinance, and which are in conformity with the location requirements of ~~the Fort Myers Beach land-use~~ this code, but which may or may not comply with the location requirements set forth in this chapter Ordinance, may continue to operate as a nonconforming use after January 21, 1997, the effective date of this Ordinance, unless terminated for failure to obtain the PAL as required by this chapter Ordinance; voluntary discontinuation of business for a period of 30 days or more, or revocation of the PAL permit. *[moved here from § 28-54]*

Sec. 27-56. Insurance. *[incorporates § 28-55]*

(a) No person shall operate a personal watercraft or parasailing activity business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of personal watercraft or parasailing activity. At a minimum, the policy shall provide coverage of not less than \$500,000 per occurrence and \$1,000,000 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the town, and be written through insurers licensed and authorized to do business in the State of Florida. The town shall also require a copy of the declaration page of the operator's

insurance policy with a listing of all insured watercraft by serial number.

(b) Evidence of said coverage is subject to acceptance and approval by the town manager prior to issuance of PWVL or PAL.

(c) Coverage shall remain in full force during the entire time that the PWVL or PAL is valid and outstanding. Failure to provide such proof shall render the PWVL or PAL null and void, and of no further use and effect. The holder's subsequent application for a new PWVL or PAL shall be subject to the regulations for a new business and shall lose the nonconforming status afforded under this chapter § 27-52(b) of this Ordinance.

Sec. 27-57. Penalty. *[incorporates § 28-56]*

Violation of the provisions of this chapter Ordinance, or failure to comply with any of the requirements, shall constitute a civil infraction. Any person who violates this chapter Ordinance or fails to comply with any provision shall upon conviction thereof be fined \$150 ~~one hundred and fifty dollars~~ for the first violation; \$300 ~~three hundred dollars~~ for the second and third violation; and the town shall consider license revocation for more than three violations of this chapter Ordinance, and in addition the violator shall pay all costs and expenses involved in the case.

Sec. 27-58. Standardized rules.
[formerly Exhibit A]

RULES

1. Operators must go slow speed until past all idle speed buoys. Operator must travel perpendicular to shore when entering or leaving the marked idle speed zone.
2. Operators must remain 200 feet from any watercraft and 500 feet from swimmers, waders or people floating in the water. Operator must yield right of way to all other vessels.
3. All ~~operators~~ renters must be at least 18 ~~16~~ years of age.
4. Operator may not be under the influence of drugs or alcohol.
5. Operator must stay in the boundaries set by the rental vendor and in sight of rental location at all times.
6. No operator shall operate watercraft in a hazardous manner.

7. Operators must listen to and obey all verbal and written rules. If any rules are broken, operator's ride will be terminated. No refunds!

REGLAS

1. El operador tiene que ir a una velocidad despacia hasta que a pasado todas las marcas de velocidad. El operator tiene que viajar perpendicular a la costa cuando entrando o saliendo la zona marcada para una velocidad ociosa.
2. El operator tiene que quedarse 200 pies de cualquier bote y 500 pies de los nadadores o personas flotando en la agua. Operadores tienen que ceder a todas los buques.
3. Todos operadores tienen que ser a lo menos 18 ~~16~~ años de edad.
4. Operadores no queden estar en la influencia de drogas o alcohol.
5. Operadores tienen que quedarce siempre en el limite hecho por las personal de alquiler y en la vista del lugar de alquiler.
6. Operadores no deben conducir el equipo en una manera dañoso o peligroso.
7. Operadores tienen que poner atención a todas las regulaciones oral y escritas. Si alguna regulacion no es seguida el alquiler va a ser terminado. El dinero no va hacer devuelto!

Vorschriften zur Mietung eines Wasserfahrzeuges

- #1. Der Bediener muss mit langsamer Geschwindigkeit fahren, bis er alle weissen Bojen passiert hat. Beim ReinKommen oder VerLassen der markierten Geschwindigkeitszone muss er sich senkrecht zum strand bewegen.
- #2. Der Bediener muss 60 m von Wasserfahrzeugen und 152 m von Schwimmern, Watvögeln und anderen Leuten, die sich im Wasser befinden, Abstand halten. Er muss allen Booten, die von rechts Kommen, Vorfahrt gewahren.
- #3. Der Bediener muss mindestens 18 ~~16~~ jahre alt sein.
- #4. Der Bediener darf nicht unter Einfluss von Drogen oder Alkohol stehen.
- #5. Der Bediener muss sich innerhalb der Grenze, die vom Vermieter gesetzt wird, und in der Sicht des Vermietungs standes bleiben.
- #6. Der Bediener soll das Fahrzeug nicht ordnungswidrig fahren.
- #7. Der Bediener sollte alle mundlichen und schriftlichen regeln befolgen. Falls irgendeine Regel missbraucht wird, wird die Fahrt sofort beendet. Es erfolgt keine Kostenerstattung.

REGLES SANDART

Regle #1 • Vitesse

Chaque conducteur doit garder une vitesse ralentie jusqu'au niveau des bouees. La rentree ou la sortie du jet ski doit etre perpendiculaire a la plage et toujours effectuee au ralenti.

Regle #2 • Distance

Le conducteur doit se tenir a 60 metres des autres vehicules, a 152 metres des nageurs et des matelats pneumatiques, ou bien des gens qui flottent. Le jet ski doit laisser la prioritee a droite.

Regle #3 • Age

Tout les conducteurs doivent avoir 18 ~~16~~ ans ou plus, sans exception!

Regle #4 • Drogue & Alcohol

Tout les conducteurs doivent etre sobres!

Regle #5 • Delimitation

Chaque conducteur doit rester a tout temps dans les limites du territoire imposees par la maison de location.

Regle #6 • Courtoisie

L'opérateur doit toujours conduire avec prudence.

Regle #7 • Regle d'Or

L'opérateur doit preter attention et obeir a tout conseil et reglementation ecrite. Si les regles ne sont pas suivies, le conducteur sera disqualifie(e), sans etre rembourse(e)!

CHAPTERS 28³ AND 29 RESERVED

³ Chapter 28, originally adopted by the Fort Myers Beach Parasailing Ordinance, Ordinance 97-02, and later amended by Ordinance 99-04, has been incorporated into Chapter 27 of this code.